vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6176 OF 2003

Smt.Shubh Keval Kapoor ... Petitioner

V/s.

M/s.Kishinchand Chellaram & Ors. ... Respondents

Mr.M.B. Shirsat for Petitioner
Mr.N.K. Mudnaney for Respondent No.1
Mr.P.K. Vyas for Respondent Nos.2,3,4,6 and 7

CORAM: **SMT.NISHITA MHATRE, J.**
DATED: **SEPTEMBER 5, 2005**

P.C.:

. This Petition has been filed against the order of the trial Court passed in Interim Notice No.250 of 2000 disallowing the petitioner's application for being joined as a party to the suit. The Plaintiff, i.e., Respondent No.1 firm herein, filed a suit against respondent No.2-firm and its partners. In the plaint, it has contended thus:

> 3. ...2. The Defendant No.1 was a partnership firm. At the material time of letting out of the said premiss, the Defendant No.1 firm consisted of the following partners:
>
> (1) Shri Durgadas Mehra
> (2) Shri Baijnath Mehra
> (3) Shri Dindayal Mehra
> (4) Shri Lalitkumar Mehra
> (5) Shubh K. Kapoor
> (6) Bhagwandas Mehra
>
> The Plaintiffs crave leave to refer to and rely upon the xerox copy of the extract of the registration of the Defendant firm which also

> shows that at all material times the Defendant No.2 was and is residing at 20, Moti Mahal, 3rd Floor, Dinshaw Vachha Road, Bombay 400 020. The Plaintiffs say that during the course of the time, all the partners, except the Defendant No.2 have died."

2. The Petitioner who is shown as partner No.5 in the paragraph above, extracted from the plaint, is still alive and, therefore, made an application for being joined as a party to the suit through her legal representative. The application was disallowed on the ground that the deed of partnership was not produced and the constituted attorney also could not bring on record any authorisation to make such an application.

3. There has been a miscarriage of justice in this case before the trial Court. The plaintiff itself contended that the petitioner was a partner of the Defendant No.1 Firm. The Petitioner being alive, it was necessary for the plaintiff to make her a party in the suit. The trial Court, therefore, ought to have permitted the application. In any event, the extract from the Register of Firms which is annexed to the Petition shows that the name of the Petitioner is entered therein on 23.7.1968 and she is still continuing as a partner. Hence, the application filed by the Petitioner needs to be allowed and accordingly, the Interim Notice is made absolute. Adding the Petitioner

as a party to the suit will not in any manner have any bearing on the litigations which may be instituted by Respondent Nos.2 to 4 against her.

4. Writ petition is disposed off accordingly.

5. Writ to go down immediately.